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Jais bin Chee & Ors v Superintendent of Lands and Surveys Kuching Division, Kuching

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q-01–724 OF 2011

APANDI ALI FCJ, ABDUL AZIZ ABDUL RAHIM AND DAVID WONG JJCA

29 JANUARY 2014

Land Law — Land acquisition — Compensation — High Court on land reference refused to disturb compensation awarded on ground s 60(1)(a) of the Sarawak Land Code required land value as at date of posting of s 48 declaration to be adopted — Land inquiry to determine compensation amount held nine years after date of posting of s 48 declaration — Whether unfair and unreasonable to pay land owners land value as at date of posting of s 48 declaration — Whether 'adequate compensation' mandated by art 13(2) of the Federal Constitution required land value as at date of inquiry to be paid — Whether state and federal laws should be interpreted in accordance with provisions of Federal Constitution and yield to latter in case of conflict

By *gazette* notification on 3 October 1996, the Minister concerned gave notice under s 48 of the Sarawak Land Code ('the SLC') that two lots of land ('the lands') belonging to the appellants would be compulsorily acquired for public purposes. It was only nine years later, on 24 November 2005, that an inquiry was held by the respondent to determine the compensation payable to the appellants for the acquisition. The respondent awarded the appellants RM496,680 as compensation based on its market valuation of the lands as at 12 August 2005. Dissatisfied with the amount, the appellants referred the matter to the High Court under s 56 of the SLC. At the land reference a valuer called by the appellants testified that the market value of the lands as at 12 August 2005 was RM812,385. The respondent's valuer, on the other hand, confirmed that the compensation awarded by the respondent was the market value of the lands as at 3 October 1996 (rather than 12 August 2005). The High Court refused to disturb the respondent's award holding that under s 60(1)(a) of the SLC it was bound to hold that the relevant valuation date to determine the compensation amount was the date of the s 48 posting of the declaration, ie 3 October 1996 and that because the appellants did not tender in evidence a valuation of the lands as at 3 October 1996 to show that the respondent's valuation was mistaken, the respondent's award should not be disturbed. The instant appeal was against that decision. Under art 13(2) of the Federal Constitution ('the Constitution') 'No law shall provide for the compulsory acquisition or use of property without adequate compensation'.

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Held:

(1) Section 60(1)(a) of the SLC read with art 13 of the Constitution demanded that the s 51 inquiry to determine the compensation to be paid should be conducted within a reasonable time-frame so that an 'adequate compensation' could be ascertained. In the instant case, the inquiry was not conducted until some nine years later. In order not to infringe art 13, the court was constrained to find that the 'adequate compensation' was the amount valued as at 12 August 2005. The word 'adequate' meant what was fair and reasonable compensation and in the instant context the value of the lands should be that as at 24 November 2005. What was 'fair and reasonable' compensation could not by any stretch of the imagination be the amount that was awarded by the respondent (see paras 24 & 28).

(2) The respondent's valuer opined at the inquiry that the fair compensation amount to be paid was the valuation amount as at 12 August 2005. The appellants had also prepared a valuation report as at that date at the inquiry. That report was not challenged, hence the court accepted that report as the appropriate amount of compensation payable to the appellants (see paras 29–30).

(3) Although the wordings in s 60 of the SLC dictated that the 1996 valuation should be used as the compensation to be paid, all statutes, be it federal or state, must be read with regard to the Constitution; in this case, art 13. When a statute was interpreted in the context of the Constitution, the court was duty-bound to ensure the statute or any part of it did not contravene the clear words in the Constitution and if it did, then that part of the statute must be struck down. The Constitution was the supreme law of the country and all laws, be it state or federal laws, were subject to it (see paras 13 & 25).

[Bahasa Malaysia summary

Melalui pemberitahuan *warta* pada 3 Oktober 1996, Menteri yang berkenaan memberikan notis di bawah s 48 Kanun Tanah Sarawak ('KTS') bahawa dua lot tanah ('tanah') yang dimiliki oleh perayu-perayu akan diambil alih secara wajib untuk tujuan awam. Hanya sembilan tahun kemudiannya, pada 24 November 2005, bahawa siasatan yang diadakan oleh responden untuk menentukan pampasan yang mesti dibayar kepada perayu-perayu untuk pengambil alihan tersebut. Responden mengawardkan perayu-perayu sebanyak RM496,680 sebagai pampasan berdasarkan penilaian pasaran tanah pada 12 Ogos 2005. Tidak berpuas hati dengan jumlah tersebut, perayu-perayu merujuk perkara kepada Mahkamah Tinggi di bawah s 56 KTS. Semasa rujukan tanah penilai dipanggil oleh perayu-perayu untuk memberi keterangan bahawa nilai pasaran tanah pada 12 Ogos 2005 adalah bernilai sebanyak RM812,385. Penilai responden, sebaliknya, mengesahkan bahawa

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pampasan yang diawardkan oleh responden adalah nilai pasaran tanah pada 3 Oktober 1996 (bukan 12 Ogos 2005). Mahkamah Tinggi menolak untuk campur tangan award responden dengan memutuskan bahawa di bawah s 60(1)(a) KTS ia adalah terikat untuk memutuskan bahawa tarikh penilaian yang relevan untuk menentukan jumlah pampasan adalah tarikh s 48 diumumkan perisytiharannya iaitu 3 Oktober 1996 dan ini adalah kerana perayu-perayu tidak mengemukakan sebagai keterangan penilaian tanah pada 3 Oktober 1996 untuk menunjukkan bahawa penilaian responden adalah salah, award responden tidak patut diganggu. Rayuan ini adalah terhadap keputusan tersebut. Di bawah perkara 13(2) Perlembagaan Persekutuan ('Perlembagaan') 'No law shall provide for the compulsory acquisition or use of property without adequate compensation'.

Diputuskan:

(1) Seksyen 60(1)(a) KTS dibaca bersama perkara 13 Perlembagaan menuntut bahawa siasatan s 51 untuk menentukan pampasan yang akan dibayar patut dilakukan dalam rangka masa yang munasabah dengan itu 'adequate compensation' dapat dipastikan. Dalam kes ini, siasatan tidak dijalankan sehingga lebih kurang sembilan tahun kemudian. Untuk tidak melanggar perkara 13, mahkamah terpaksa untuk mendapatkan bahawa 'adequate compensation' adalah jumlah yang dinilaikan pada 12 Ogos 2005. Perkataan 'adequate' bermaksud pampasan apa yang adil dan munasabah dan dalam konteks ini adalah nilai tanah patut pada 24 November 2005. Pampasan yang 'fair and reasonable' tidak boleh daripada apa-apa jangkauan imaginasi adalah jumlah yang diawardkan oleh responden (lihat perenggan 24 & 28).

(2) Penilai responden menyatakan pendapatnya semasa siasatan bahawa jumlah pampasan yang adil untuk dibayar adalah jumlah penilaian pada 12 Ogos 2005. Perayu-perayu juga telah menyediakan laporan penilaian pada tarikh tersebut semasa siasatan. Laporan tidak dibantah, maka mahkamah menerima laporan tersebut sebagai jumlah wajar pampasan yang mesti dibayar kepada perayu-perayu (lihat perenggan 29–30).

(3) Walaupun perkataan-perkataan dalam s 60 KTS menentukan bahawa penilaian 1996 patut digunakan sebagai pampasan untuk dibayar, kesemua statut, samada persekutuan atau negeri, mesti dibaca dengan mengambil kira Perlembagaan; dalam kes ini, perkara 13. Apabila statut ditafsir dalam konteks Perlembagaan, mahkamah adalah terikat untuk memastikan statut atau mana-mana bahagiannya tidak melanggar perkatan-perkataan jelas di dalam Perlembagaan dan jika ia melanggar, dengan itu bahagian statut tersebut mesti dibatalkan. Perlembagaan adalah undang-undang agung negara dan kesemua undang-undang, sama ada undang-undang negeri atau persekutuan, adalah tertakluk kepadannya (lihat perenggan 13 & 25).]

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Notes

For a case on compensation, see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) para 3606.

Cases referred to

B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] MLJ 169, PC (refd)

Ismail bin Bakar & Ors v Director of Lands and Mines, Kedah Darul Aman [2011] 5 MLJ 197; [2010] 9 CLJ 810, CA (folld)

Keng Kien Hock v Timbalan Menteri Keselamatan Dalam Negeri Malaysia and other appeals [2007] 5 MLJ 611, CA (refd)

Kerajaan Negeri Selangor & Ors v Sagong bin Tasi & Ors [2005] 6 MLJ 289; [2005] 4 CLJ 169, CA (folld)

Metramac Corp Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) v Fawziah Holdings Sdn Bhd [2006] 4 MLJ 113; [2006] 3 CLJ 177, FC (refd)

Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors [1998] 3 MLJ 82, SC (refd)

Pemungut Hasil Tanah Daerah Barat Daya, Penang v Kam Gin Paik & Ors [1986] 1 MLJ 362; [1986] 1 CLJ 283, PC (refd)

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee [1983] 2 MLJ 35, FC (refd)

Legislation referred to

Federal Constitution art 13, 13(1)
Land Acquisition Act 1960 ss 8, 29, 29(1), Forms G, H
Sarawak Land Code ss 48, 49, 51, 56, 60, 60(1)(a)

Appeal from: Land Reference Nos 15–2 of 2010-II and 15–3 of 2010-III (High Court, Kuching)

Siti Emiliana (Arthur Lee Cheng Chuan with her) (Arthur Lee, Lin & Co) for the appellants.
Mc Willyn Jiok (Attorney General's Chambers) for the repondent.

David Wong JCA (delivering judgment of the court):

INTRODUCTION

[1] This appeal is against the decision of the High Court in which the learned judge in respect of two consolidated land references refused to increase the awards given by the Superintendent of Lands and Survey Department Kuching for the acquisition of Lot 51 Bako Town District and Lot 685 Block 2 Muara Tebas Land District.

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A BACKGROUND FACTS

[2] The Minister on 3 October 1996 vide *Gazette* Notification No 2910 issued the relevant notices in respect of the above mentioned lots under s 48 of the Sarawak Land Code. Such notices are required in law to inform the owners B that their lands are acquired for public purposes. There is no dispute that the lands were used for public purposes.

[3] On 28 October 2005, notices were issued under s 49 of the Sarawak C Land Code which in substance requires the Superintendent of Lands and Survey Department to notify the owners of the compulsorily acquired land that the state government intends to take possession of the same and the owners may make their claims for compensations before the Superintendent of Lands and Survey Department at the time and place set out in the notices.

D

[4] The appellants had made the relevant claims for compensations to the Superintendent of Lands and Survey Department and on 24 November 2005 an inquiry was held at the Lands and Survey Department, Kuching. One Puan Haslinda bt Hamdan was called by the respondent as the valuer to testify on the E valuation of the lands and in her report she stated as follows:

> the subject land is under section 48 of the Land Code vide GN No 2910 dated 03.10.1996. In accordance with section 60(1)(a) of the Land Code this is the date of valuation ie at the date of section 48 of the Land Code but *I have recommended that the date of this report is the date of valuation ie 12.08.2005 due to the time frame.* F At this date, I am of the opinion that the fair and reasonable market value is of RM32,040.00 and RM464,640.00 for Lot 51 and Lot 658 respectively.

[5] The superintendent then awarded the amount as recommended by Puan Haslinda bt Hamdan. Not satisfied with the compensation, the G appellants made a reference to the High Court under s 56 of the Sarawak Land Code where the High Court is empowered to vary the amount of compensation awarded.

LAND REFERENCE BEFORE THE LEARNED JUDGE

H

[6] Learned counsel for the appellants had submitted that the relevant date for valuing the compensation amount should be that as recommended by Puan Haslinda bt Hamdan and that is, 12 August 2005. Pursuant to that, the appellants called their own valuer ('OW2') who had valued Lots 51 and 658 at I RM52,065 and RM760,320 respectively making a total compensation of RM812,385.

[7] The respondent called its valuer in RW1 who had adopted the valuation of Puan Haslinda bt Hamdan and used 3 October 1996 as the valuation date.

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As noted by the learned judge the differences between the two valuations are RM20,025 for Lot 51 and RM295,689 for Lot 658.

[8] The learned judge's rationale in refusing to disturb award can be seen in this paragraph of his grounds:

> Adopting the said 'recommended date (12 August 2005) would appear clearly advantageous, and in the context the objectors can hardly be blamed for expounding an argument supportive of their stand based on that date. That, inter alia, the market value at the date of posting of the declaration made under s 48 (3 October 1996) shall be taken into consideration in determining the amount of compensation to be awarded in these two cases (ie the applicable law, s 60(1)(a)) is so glaringly clear (see also the cases cited by the respondent, *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1988] 3 MLJ 82 and *Lee Teng Siong v Lee Kheng Lian & Ors* [2006] 5 MLJ 609), that in the face of the respondent's valuation based on 3 October 1996 as the material date of valuation, and in the circumstances of the instant cases, it became incumbent upon the ojectors to do a valuation based on 3 October 1996 to prove, that the superintendent's award arrived at in such a manner was prima facie inadequate.
>
> As the objectors failed to do so, the objectors have failed to discharge the aforesaid burden of proof. The respondent's respective valuation based on the date of s 48 of the Sarawak Land Code in respect of the two land reference cases, must therefore prevail ie for Lot 5 — RM32,040 at RM12 per square meter, and for Lot 685 —RM464,640 at RM 11 per square metre. There shall be no order as to cost.

OUR GROUNDS OF DECISION

[9] The starting point of our deliberation must be s 60(1)(a) of the Sarawak Land Code which states as follows:

> (1) In determining the amount of compensation to be awarded for land resumed under this Part, the Court shall take part into consideration the following matters and no others —
>
> > (a) the market value at the date of publication of notification under section 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under section 48.

[10] The learned judge found that the words are so crystal clear that he was duty bound to apply it and that is the date of valuation for the compensation amount is the date of s 48 posting of the declaration, that is, 3 October 1996.

[11] The learned judge also relied on the cases of *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1998] 3 MLJ 82 where the then Supreme Court said this concerning interpreting words of statute:

> For it is trite law that where the words of a statute are clear there is no room for the court to go beyond the expressed language of the statute.

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[12] In recent times, the Federal Court in *Metramac Corp Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) v Fawziah Holdings Sdn Bhd* [2006] 4 MLJ 113; [2006] 3 CLJ 177 expressed the same sentiments:

> The primary duty of the court is to give effect to the intention of the Legislature as expressed in the words used by it and no outside consideration can be called in aid to find another intention (see *Nathu Prasad v Singhai Kepurchand* [1976] Jab LJ 340). Thus the duty of the court, and its only duty, is to expound the language of a statute in accordance with the settled rules of construction and has nothing to do with the policy of any statute which it may be called upon to interpret (see *Vacker & Sons Ltd v London Society of Compositors* [1913] AC 117; *NKM Holdings Sdn Bhd v Pan Malaysia Wood Bhd* [1987] 1 MLJ 39; [1986] 1 LNS 79.

[13] We have no reason to disagree with the principles of law expounded in the above quoted judgments. However when a statute needs to be interpreted in the context of the Federal Constitution, the court is duty bound to ensure that such statute or any part thereof does not contravene the clear words in the Federal Constitution and if it does contravene, then that part of the statue must be struck down. The rationale is simply that the Federal Constitution is the supreme law of the country and that all laws, be it state laws or federal laws, are subject to it.

[14] Learned author Prof Dr Shad Saleem Faruqi in his book — 'Document of Destiny — The Constitution of the Federation of Malaysia' 2008 Edition Star Publications (M) Bhd at p 21 describes what a written constitution entails:

> A written Constitution is the supreme and highest law of the land, the law of laws, the *grundnorm*. It is the law on which all other laws rest. It is special, higher legal status. It is the highest rule in the legal pyramid, the apex of hierarchy of norms. It is the law to which all other laws must conform and from which all other laws are ultimately derived. It is the ultimate source of all legal authority. It provides the yardstick for testing the validity of all other laws.

[15] In the context of this appeal the relevant article in the Federal Constitution is art 13 which reads as follows:

> (1) No person shall be deprived of property save in accordance with law.
>
> (2) No law shall provide for the compulsory acquisition or use of property without *adequate compensation*.

[16] What this article requires is simply that owners of all compulsorily acquired lands be paid 'adequate compensation' by the relevant authorities. The issue which confronts us now is what is 'adequate compensation'?

[17] Before we deal with that issue, we should remind ourselves of the salient facts here which are these. There is no provision in the Sarawak Land Code

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stating as to when an inquiry into the compensation amount to be paid is to be held and when that compensation amount is to be paid. In this case, there has been a *lapse of nine years* since the s 48 posting before the inquiry hearing was held. The effect of this s 48 posting is simply that the appellant ceases to have any legal or beneficial interests in the acquired lands.

[18] Learned counsel for the appellant in his supplementary submission refers us to the Federal Court case of *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35 where the facts are these. The relevant land was acquired through a s 8 declaration under the Land Acquisition Act dated 25 April 1974. However the inquiry into the compensation amount to be paid to the respondent there was only held seven years later. An application was made by the respondent to quash the award of the collector on the ground of the unreasonable delay. The application was sustained at the High Court and on appeal to the then this is what Supreme Court said through Salleh Abas CJ (Malaya):

> We think that it is sufficient to decide this appeal on the basis of a simpler question, ie, whether or not in view of the long delay resulting in an injustice to the land owner the acquisition was done in accordance with the law (the Land Acquisition Act). Only in the circumstances that it is not done in accordance with the Act can we say that the acquisition is contrary to the requirement of *cl (1) of art 13 of the Federal Constitution* which requires that to be lawful every deprivation of property must be done in accordance with the law.
>
> Every exercise of statutory power must not only be in conformity with the express words of the statute but above all must also comply with certain implied legal requirements. The court has always viewed its exercise as an abuse and therefore treats it as illegal where the exercise is done for an inadmissible purpose or on irrelevant grounds or without regard to relevant consideration or with gross unreasonableness (*de Smith's*, (4th Ed), p 323; and *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223).
>
> ...
>
> What then is the 'convenient speed'? In our view it must 'as soon as possible' or 'within a reasonable time', and not 'as late as possible'. Obviously what amounts to 'convenient speed' must vary from case to case and in our judgment seven years delay is certainly not a 'convenient speed' as it is so far outside the normal period of time that no reasonable authority could ever regard it as reasonable. That being the case the court is entitled to strike down the impugned acquisition proceedings as illegal (*Regina v St Albans Crown Court, Ex-parte Cinnamond* [1981] QB 480 and *Regina v Tottenham Justices, Ex-parte Dwarkados Joshi* [1982] 1 WLR 631).

[19] The case of *Keng Kien Hock v Timbalan Menteri Keselamatan Dalam Negeri Malaysia and other appeals* [2007] 5 MLJ 611 was also referred to by learned counsel for the appellant where the learned judge held, inter alia, that:

> s 54(2) of the Interpretation Acts 1948 and 1967 provides that where no time is prescribed within which anything shall be done, that thing shall be done with

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> convenient speed and as often as the prescribed occasion arises. The term 'a convenient speed' is not defined by any statute. However, the definition and meaning of 'a convenient speed' is not defined by any statute. The definition and meaning of 'a convenient speed' in the context of the scope of s 2 of the Act can be found from the judicial pronouncement made in earlier decided cases ...
>
> ... We are of the view that in order to arrive at a correct finding of fact as to whether the legal obligation was carried out with all convenient speed under the circumstances of such particular case, it shall be the duty of the trial judge to look into all the affidavit evidence adduced by the parties in the proceedings ...

[20] The recent decision of this court in *Ismail bin Bakar & Ors v Director of Lands and Mines, Kedah Darul Aman* [2011] 5 MLJ 197; [2010] 9 CLJ 810, through the judgment of Hishamudin Mohd Yunus JCA provides helpful guidelines. The facts there are these. The appellants' lands were acquired by the State Authority of Kedah on 25 May 1995 pursuant to provisions of the Land Acquisition Act. Soon after the acquisition, an inquiry was held to determine the compensation amount to be paid. On 17 December 1995, the land administrator filed in his office the Form G stating his award for the lands. Soon after the filing of Form G, the land administrator though there was no evidence was deemed to have served Form H on the appellants.

[21] After the service of Form H, the provision of s 29 of the Land Acquisition Act comes into play. It states as follows:

> Payment of compensation or deposit in Court
>
> 29(1) After a notice of award in Form H has been served in the manner prescribed by s 53 upon all interested persons the land administrator shall, as soon as may be, make payment of each awarded entitled thereto unless —
>
> (a) There shall be no person competent to receive such payment;
>
> (b) The person entitled thereto does not consent to receive the amount awarded; or
>
> (c) There is a dispute as to the right or title of the person to receive the compensation, or as to the apportionment thereof.

[22] What had happened in that case was that no payment was made to the appellants there until some nine years later. In view of the delay, the appellants took out an application in court to declare the acquisition as null and void and pray for the return of the lands. The application did not find favour in the High Court but on appeal to the Court of Appeal, this court sustained the appellants' application. The Court of Appeal cited with approval the dicta of Lord Keith of Kinkel in *Pemungut Hasil Tanah Daerah Barat Daya, Penang v Kam Gin Paik & Ors* [1986] 1 MLJ 362; [1986] 1 CLJ 283 which reads as follows:

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> Delay contrary to the express or implied statutory requirements is in itself a ground invalidating proceedings which follow such delay, without the necessity of any inference that the acquisition has been abandoned.
>
> Applying these principles, Their Lordships are of opinion that in this case the delay of seven years between GN 89 and the appellant's notice of inquiry on March 22, 1979 had the effect that the latter was given in contravention of the statutory requirements and did not constitute a valid exercise of power. No attempt was made to justify or explain the delay.

[23] The Court of Appeal then held that there was non-compliance of s 29(1) of the Land Acquisition Act in that payments were not made 'as soon as may be' and as a result of which it had contravened art 13(1) of the Federal Constitution. Accordingly the acquisition was rendered null and void and the relevant lands were ordered to be returned.

[24] Reverting to the appeal at hand, all the appellants only want is that the compensation amount to be paid for the acquisition is to be premised on the date of inquiry which was held on 24 November 2005. We find that request not only reasonable but also would be consistent with the spirit of art 13 which commands 'adequate compensation' to be given to the appellants. The words 'adequate compensation' must be given their proper interpretation. The word 'adequate' can only mean what is fair and reasonable compensation and in the context of this case the value should be that as at 24 November 2005 and calculated by OW1. What is 'fair and reasonable' compensation cannot by any stretch of imagination the compensation amount awarded by the respondent. The rationale in *Ismail Bakar & Ors* similarly applies with full force in this appeal.

[25] We are fully aware of the wordings in s 60 of the Sarawak Land Code dictate that the 1996 valuation is to be used as the compensation to be paid. As we mentioned above, all statutes be in federal or state must be read having regard to the Federal Constitution and in this case, art 13.

[26] In *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] MLJ 169, this is what Lord Denning when delivering the advice of the board said:

> In a conflict of this kind between the existing law and the Constitution, the Constitution must prevail. The court must apply the existing law with such modifications as may be necessary to bring it into accord with the Constitution.

[27] This court in *Kerajaan Negeri Selangor & Ors v Sagong bin Tasi & Ors* [2005] 6 MLJ 289; [2005] 4 CLJ 169, was faced with a piece of state legislation which gave the state government a discretion whether or not to pay compensation for acquisition of landed property which would contravene

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art 13 of the Federal Constitution. This is how Gopal Sri Ram JCA (as he then was) resolved the inconsistency:

> The way in which s 12 is to be brought into conformity with the Constitution is to make it yield to art 13(2) which reads:
>
> > 13(2) No law shall provide for compulsory acquisition or use of property without adequate compensation, That is achieved by not reading the words 'the State Authority may grant compensation therefor' as conferring a discretion on the State Authority whether to grant compensation or not. For otherwise it would render s 12 of the 1954 Act violative of art 13(2) and void because it will be a law that provides for the compulsory acquisition of property without adequate compensation. A statute which confers a discretion on an acquiring authority whether to pay compensation or not enables that authority not to pay any compensation. It is therefore a law that does not provide for the payment of adequate compensation and that is why s 12 will be unconstitutional. Such a consequence is to be avoided, if possible, because a court in its constitutional role always tries to uphold a statute rather than strike it down as violating the Constitution. As Jeeva Reddy J said in *State of Bihar and Others v Bihar Distillery Ltd* AIR 1997 SC 1511:
> >
> > > The approach of the Court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should to try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it.
> >
> How then do you modify s 12 to render it harmonious with art 13(2)? I think you do that by reading the relevant phrase in s 12 as 'the State Authority shall grant adequate compensation therefor'. By interpreting the word 'may' for 'shall' and by introducing 'adequate' before compensation, the modification is complete. I am aware that ordinarily we, judges, are not permitted by our own jurisprudence, to do this. But here you have direction by the supreme law of Federation that such modifications as the present must be done. That is why we can resort to this extraordinary method of interpretation

[28] Applying the above principles set out above, we are of the considered view that s 60(1)(a) of the Sarawak Land Code read with art 13 of the Federal Constitution demands that the s 51 inquiry for compensation to be paid be conducted within a reasonable time frame so that an 'adequate compensation' can be ascertained. In the case at hand, the s 51 inquiry was not conducted until some nine years later. In order not to infringe art 13 of the Federal Constitution, we are constrained to find that the 'adequate compensation' to be the amount valued as at 12 August 2005.

[29] It is not insignificant that the respondent's own valuer had opined at the inquiry that the fair compensation amount to be paid should be that as valued as at 12 August 2005. Her view as such corroborates our stand on what is adequate compensation in the circumstance of this case.

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[30] As mentioned earlier, the appellant had prepared a valuation report as at 12 August 2005 at the inquiry. This report was not challenged at all, hence we accept that report (see p 118 of the record of appeal Part C Vol 1) as the appropriate compensation to award to the appellant.

CONCLUSION

[31] For reasons stated above, we allow this appeal, set aside the judgment of the High Court and find that the compensation amount of the two acquired lands to be in the sum of RM812,385.

[32] As a sum of RM496,680 had been paid to the appellant, a balance of RM315,705 remains unpaid. In the circumstance, we give judgment to the appellant in the sum of RM315,705 with interests at the rate of 5%pa from the date of award (that is 24 November 2005) until full and final payment of the same. We further give costs to the appellant in the sum of RM25,000.

Order accordingly.

Reported by Ashok Kumar